UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE

ERNEST LANE TRIBBLE	)	
	)	
v.	)	NO.2:12-CV-279
	)	
DR. WILLIAM R. KINCAID, *ET AL.*	)	

O R D E R

This medical malpractice case is before the Court to consider the defendants' opposition to the notice of voluntary dismissal without prejudice filed by the plaintiff under Federal Rule of Civil Procedure 41(a)(1)(A)(i). [Doc. 18]. The defendants strongly oppose the plaintiff taking this action because they contend that this dismissal should be with prejudice. Although the defendants' have filed a motion to dismiss for lack of jurisdiction, they have not filed an answer or a motion for summary judgment.

It is clearly settled that Federal Rule of Civil Procedure 41(a)(1)(A)(i) permits an action to "be dismissed by the plaintiff without order of court by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs." The Sixth Circuit has taken Rule 41(a)(1)(A)(i) "at face value" and assumed that it "means what it says." *Aamot v. Kassel*, 1 F.3d 441, 444 (6th Cir.1993). Quoting *Carter v. United States*, 547 F.2d 258, 259 (5th Cir.1977) with approval, the Sixth Circuit has noted that Rule 41(a)(1)(A)(i) does not sanction a "case-by-case analysis of the amount of effort expended by the defendants." *Aamot*, 1 F.3d at 444. "Defendants who desire to prevent plaintiffs from invoking their unfettered right to dismiss actions under Rule 41(a)(1) may do so by taking the simple step of filing an answer." *Id.*

Furthermore, " Rule 41(a)(1) explicitly leaves the option to dismiss in the plaintiff's hands; once plaintiff gives his notice, the lawsuit is no more." *Id*.

Because none of the defendants filed an answer or a motion for summary judgment before the plaintiff filed his notice of voluntary dismissal, voluntary dismissal in this case is proper. Defendants' objection to this dismissal is **OVERRULED**. The defendants' Motion to Dismiss based on lack of jurisdiction is **DENIED** as **MOOT**. [Doc. 3]. This matter is DISMISSED WITHOUT PREJUDICE.

So ordered.

ENTER:

s/J. RONNIE GREER
UNITED STATES DISTRICT JUDGE